

NOTICE OF EFFECTIVE DATE OF REGULATION CHANGES

**California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
and
Division 5. Local Agency Personnel Standards**

Date: May 19, 2003

**To: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS AND
MEMBERS OF THE GOVERNOR'S CABINET**

**Subject: LAYOFF RULES – §§ 470, 470.1, 471, 471.1, AND 472, AND
LOCAL AGENCY PERSONNEL STANDARDS §§ 17502 AND 17520**

This memorandum is to advise you that the proposed revision/adoption of §§ 470, 470.1, 471, 471.1, and 472 and §§ 17502 and 17520 of Local Agency Personnel Standards, in Title 2 of the California Code of Regulations (CCR), Divisions 1 and 5, became effective on May 7, 2003. A copy of the final regulations is attached. These final regulations will be published in the CCR, Title 2.

These rules were previously described in the State Personnel Board's (SPB) Notice of Modification of Proposed Regulations dated February 11, 2003. The layoff rules, in their final form, reflect SPB's response to comments received on the proposal that was heard before the five-member State Personnel Board on January 7, 2003, and March 4, 2003. The rules now reflect clarifying language and the potential for deviation from a seniority-based system through a negotiated memorandum of understanding.

Government Code § 19798 authorizes SPB to adjust the order of layoff and reemployment to maintain racial and gender composition of an affected workforce when it finds evidence of discrimination in past hiring practices. This procedure has been referred to as the process to adjust seniority-based layoff (PASL).

Prior to implementing a layoff, State departments must now notify SPB, and submit such information in accordance with § 471, in order for SPB to determine the applicability of Government Code § 19798. In accordance with the decision of the court in *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16, an adjustment

in the order of layoff may be ordered only if the executive officer determines that the department is required by federal law to adjust the order of layoff or that the failure to adjust the order of layoff in accordance with Government Code § 19798 would result in ineligibility for a federal program and a loss of federal funds. Departments may also include any materials that would assist SPB in its review, including i.e. copy of the layoff plan, classifications impacted, number of positions being reduced, area of layoff.

Notification must also be served upon the respective employee organization(s) whose members may be impacted by the layoff. A sample declaration of no impact is attached. Additionally, new § 471.1 provides that appeals be in writing and filed no later than 30 days from the date the employee, employee organization, or department was notified of the determination or decision of the department or executive officer.

CONTACT PERSON:

Questions may be directed to Marianne Hardin at (916) 651-7140 or Elizabeth Montoya at (916) 654-0842, State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010 or TDD (916) 653-1498.

Laura Aguilera
Assistant Executive Officer

Attachment: Text of Final Regulations
Sample Declaration

[SAMPLE DECLARATION OF NO IMPACT]

MEMORANDUM

Date: **[Date of Memo]**

To: State Personnel Board
Policy Division, M.S. 55

From : **[Name of Department]**
[Division/Office]

Subject: Layoff Notification

The **[Name of Department]** is in the process of undergoing a layoff, with an anticipated effective date of **[Insert Date]**. A layoff plan (attached) has been submitted to the Department of Personnel Administration. **-or-**The Department of Personnel Administration has approved the layoff plan (attached).

Pursuant to Title 2, California Code of Regulations § 471(a)(2), the **[Name of Department]** has determined that it is not subject to any federal authority that would require it to adjust the order of layoff pursuant to Government Code § 19798, or that failure to adjust the order of layoff in accordance with Government Code § 19798 would result in **[Name of Department]**'s ineligibility for a federal program and a loss of federal funds. Notice has been served upon the respective employee organization(s) whose members may be impacted by the layoff.

Questions may be directed to **[Name of Contact Person]** at **[Telephone Number/Address/E-Mail if appropriate]**.

[Signature of Department Authority]
[Title]

cc: Employee Organization(s)

Attachment

Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1. General Civil Service Regulations

Article 21. Layoff Review

§ 470. General.

A department undergoing layoff shall, prior to implementing a layoff, notify the board's executive officer of the impending layoff so that the executive officer may determine the applicability of Government Code Section 19798. If federal law or the United States Constitution requires the adjustment of the order of layoff pursuant to Government Code Section 19798, or if the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, a department may not proceed with a seniority-based layoff, but may have to adjust the order of layoff under the circumstances set forth in Section 471.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Section 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

§ 470.1. Definitions.

For purposes of this Article, in conjunction with the definitions used in Section 547.80, the following definitions shall apply:

(a) "Affected Workforce" means all employees in the class(es) of layoff.

(b) "Census Survey" is the assessment of affected workforce group members by means of analysis of questionnaires, in which the employees self-designate their race/ethnicity, gender, and, if applicable, disability category.

(c) "Class(es) of Layoff" means the class(es) designated for a reduction of incumbents through layoff, or demotion in lieu of layoff, under the provisions of Government Code Sections 19997, 19997.8 and 19997.9.

(d) "Department" means the civil service workforce under the appointing power initiating the layoff.

(e) “Relevant Labor Force” means the pool of individuals who possess the requisite qualifications for the classification or occupational group within the geographic area in which the department can reasonably expect to recruit.

NOTE: Authority cited: Section 18701 and 19231, Government Code.
Reference: Sections 11092.5, 12940, 19792, 19798, 19997, 19997.2, 19997.8 and 19997.9, Government Code; and Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 471. Layoff Impact Determination.

(a) A department undergoing layoff shall provide information to the board to allow the board to determine whether the department is required by federal law to adjust the order of layoff, or whether the department is mandated to conduct a seniority-based layoff, unless a seniority-based layoff would conflict with the provisions of a memorandum of understanding reached pursuant to the Ralph C. Dills Act, Government Code Section 3512 et seq. (Dills Act).

(1) The information to be provided to the board may consist of citation either to any applicable federal authority that requires the department to adjust the order of layoff pursuant to Government Code Section 19798, or to any information that shows that the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds.

(2) If the department is subject to no federal authority that would require it to adjust the order of layoff pursuant to Government Code Section 19798, and is not aware of any information that shows that the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, the department may so state in a declaration submitted to the board, and served upon the respective employee organization whose members may be impacted by the layoff.

(b) If the department determines that it is subject to the provisions of Government Code Section 19798, the department shall provide to the board evidence that it served upon the affected employee(s) and respective employee

organization(s) notice of the department's determination under subsection 471(a)(1).

(c) If the executive officer determines that the department has demonstrated that it is not required by any federal authority to adjust the order of layoff and is not aware of any information that shows that the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, the layoff review process shall end and the executive officer shall authorize the department to proceed with a seniority-based layoff of employees in the class(es) of layoff, unless a seniority-based layoff would conflict with the provisions of a memorandum of understanding reached pursuant to the Dills Act.

(d) If the executive officer determines pursuant to subsection 471(a)(1) that the department is required by federal law to adjust the order of layoff or that the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, and that therefore an adjustment of the order of layoff may be necessary, the department shall provide the following additional information to the board:

(1) Results of a departmental census survey of all employees in the class(es) of layoff, using SPB 1070, State Employee Race/Ethnicity Questionnaire (7/02), and SPB 131A, State Employee Disability Questionnaire Resurvey (6/01), which are hereby incorporated by reference in their entirety;

(2) Listing of the affected workforce incumbents in seniority order; and

(3) Any additional supporting information.

(e) Using the information provided by the department pursuant to subsections 471(d)(1), (2), and (3), the executive officer shall conduct a data analysis of the composition of the affected labor force by comparing the most relevant labor force representation with the current representation and post-layoff representation. If the analysis establishes that the labor force representation in the affected workforce after layoff would be either substantially the same as it was before such layoff, or equal to its relevant labor force percentage, the

executive officer may authorize the department to proceed with a seniority-based layoff of employees in the class(es) of layoff.

(f) If the analysis conducted in subsection 471(e) establishes that the labor force representation after layoff will not be substantially the same as it was before layoff, the executive officer shall conduct an analysis of any evidence of the existence of discrimination in past hiring practices. This analysis shall include, but is not limited to, a review of job-related hiring and recruiting practices, bottom-line hiring and examination data, discrimination or merit issue complaints and appeals, or any other relevant and factual information. If this analysis establishes the possibility of past discriminatory hiring practices in the class(es) of layoff, the executive officer shall schedule a hearing as provided in Section 472.

(g) At any time during the board's review process, the executive officer may authorize a seniority-based layoff of part of the affected workforce in order to retain a sufficient number of employees with the highest seniority scores in the class(es) of layoff so as to maintain the same representation in the affected class(es) as existed prior to the layoff. Such retention shall not alter the order of seniority established for the current layoff.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 18654.5, 19790 and 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

§ 471.1. Appeals.

All appeals submitted under this section shall be in writing and filed no later than 30 days from the date the affected employee, respective employee organization, or department was notified of the determination or decision of the department or executive officer under Section 471 by the department or the executive officer. Any factual assertions in support of the appeal shall be supported by documentary evidence and/or declarations under penalty of perjury.

(a) Appeal(s) as to the results of the departmental census survey and race/ethnicity, gender, or disability identification of the employee, and appeals as to whether the department is or is not mandated by federal law to adjust the

order of layoff or would be at risk of losing federal funding if it does not adjust the order of layoff, shall be filed with the executive officer for resolution. The appeal(s) shall, at a minimum, set forth the legal and factual basis for the appeal(s). The executive officer shall investigate and may request additional information from the filing party and/or the department. If the appellant or the department disagrees with the decision of the executive officer, the appellant or the department may appeal that decision to the board, no later than 30 days from the date of notification of the determination by the executive officer. The board may rule on the appeal with or without a hearing.

(b) Appeal(s) as to the determination by the executive officer to allow the department to proceed with a seniority-based layoff of all or part of the affected workforce shall be filed with the Appeals Division of the State Personnel Board for resolution. The appeal(s) shall, at a minimum, set forth the legal and factual arguments as to why the determination(s) challenged in the appeal is/are improper. The Appeals Division shall be authorized to investigate and may conduct a hearing.

(c) The filing of an appeal pursuant to Section 37 shall not delay the implementation of a decision to proceed with a seniority-based layoff.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Section 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

§ 472. Past Hiring Practices Hearing.

When required by Section 471 or ordered pursuant to Section 471.1, the board shall conduct a hearing to determine if past discriminatory hiring practices have occurred in the class(es) of layoff.

(a) The executive officer shall give the department and employees in the affected workforce at least 15 days notice of the hearing and shall prepare a written report for the hearing. The report shall include all available data, statistical and otherwise, concerning past hiring practices related to the class(es) of layoff.

(b) Any other party may also present evidence at the hearing concerning past hiring practices related to the class(es) of layoff.

(c) If the board finds that past discriminatory hiring practices related to the class(es) of layoff has occurred, it shall:

(1) Issue Findings of Fact supporting its determination and an order to remedy such discrimination. To the extent permitted by law, such an order may include, but is not limited to, changing the order and/or subdivision(s) of layoff and reemployment so that the relative composition of the affected workforce of that category of employees discriminated against will be, as nearly as possible, the same immediately after the layoff as it was immediately before the layoff for those affected workforce groups.

(2) If the board finds that no discrimination in past hiring practices has occurred, it shall issue an order requiring the layoff to continue in the normal order of seniority, unless a seniority-based layoff would conflict with the provisions of a memorandum of understanding reached pursuant to the Dills Act.

NOTE: Authority cited: Sections 18701 and 19702.1, Government Code.
Reference: Sections 19790 and 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

Title 2. Administration
Division 5. Local Agency Personnel Standards
Chapter 2. Merit System Regulations
Article 6. Appointments, Transfers and Nonpunitive Separations and Demotions

Subarticle 4. Reduction in Force

§ 17502. Reduction in Force.

(a) Whenever it is necessary because of lack of funds or whenever it is otherwise in the best interests of the appointing authority to reduce staff, the appointing authority may lay off employees including those who have been granted an approved leave of absence. The order in which employees would be separated or demoted in a reduction in force shall be based upon type of appointment, seniority and to the extent practical, relative efficiency. If a performance reporting system is used to determine relative efficiency, it must meet the requirements of Section 17495.

(b) When a layoff is imminent in a local agency, the State Personnel Board Executive Officer may prohibit appointments, except from reemployment lists, to classes of potential layoff, lower level classes in the same series, and classes to which transfer under Section 17500 or 17515 could be made.

(c) If federal law or the United States Constitution requires the adjustment of the order of layoff pursuant to Government Code Section 19798, or if the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, a local agency may not proceed with a seniority-based layoff, but may have to adjust the order of layoff in accordance with Section 17520.

NOTE: Authority cited: Section 19803, Government Code.

Reference: Section 19800, 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Ca. App. 4th 16.

§ 17520. Modified Reduction-in-Force Process.

(a) If a local agency is required by federal law or the United States Constitution to adjust the order of layoff pursuant to Government Code Section 19798, or if the failure

to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, the local agency shall be subject to the provisions of Government Code Section 19798 and regulations of the State Personnel Board governing the adjustment of layoff pursuant to that statute.

(b) Where the State Personnel Board, after a hearing, finds that past discriminatory hiring practices have occurred in a covered local agency department, that is subject to the provisions of Government Code Section 19798, the State Personnel Board may authorize modification of the layoff, demotion, or reemployment process of the department under Interagency Merit System jurisdiction to remedy the effects of the discriminatory hiring practices.

Note: Authority cited: Section 19803, Government Code.

Reference: Section 19800, 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.